APPEAL NO. 030705
FILED MAY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 17, 2002, with the record closing on February 20, 2003. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) cannot be determined; that a second designated doctor should be appointed in this case; and that the issues of entitlement to supplemental income benefits (SIBs) is not yet ripe because the IR issue remains unresolved and thus the threshold requirement for SIBs eligibility that the claimant have a 15% IR has not been met in this case as of yet. In his appeal, the claimant argues that the hearing officer erred in determining that the 15% IR cannot be adopted and in not resolving the issue of his entitlement to SIBs for the first and second quarters. The appeal file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed as modified.

The parties stipulated that the claimant sustained a compensable injury on _____. In a prior hearing, it was determined that the claimant's compensable injury includes an injury to his left testicle in addition to an inguinal hernia. That decision was affirmed on appeal in Texas Workers' Compensation Commission Appeal No. 022118, decided October 7, 2002. The parties also stipulated that Dr. R, was selected by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor in this case and that the claimant reached maximum medical improvement (MMI) on May 15, 2001, in accordance with Dr. R's report.

The hearing officer did not err in determining that the issue of the claimant's IR cannot be determined at this time and that a second designated doctor should be appointed in this case. In a Report of Medical Evaluation (TWCC-69) dated June 25, 2001, Dr. R certified that the claimant reached MMI on May 15, 2001, with an IR of 15%. In the narrative report accompanying his TWCC-69, Dr. R explained that he was assigning the 15% for "sensory nerve involvement of the ilioinguinal and pudenal sensitivity." The carrier sent a copy of Dr. R's report to a peer review doctor, who wrote a report pointing to alleged errors in the designated doctor's report. The peer review report was sent to the designated doctor for review with a question as to whether it changed his opinion as to the claimant's IR. In response to that report, Dr. R stated that he "will have to rescind the formula in which I used to calculate the fifteen percent impairment." However, Dr. R concluded that no change in the 15% IR had to be made because he "relied heavily" on Dr. F report in assigning the 15% IR. Dr. F is a carrier required medical examination doctor, who examined the claimant on May 22, 2001. Dr. F assigned a 15% IR to the claimant. In his narrative report, Dr. F stated that the claimant has "sensory nerve involvement of ilioinguinal area hypogastric sensitivity

nerves" and determined that based upon page 65 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), "the proper percent of whole person impairment would be 15%." After the hearing, the hearing officer sent a letter of clarification to the designated doctor asking him to explain how the 15% IR was assigned from page 65 of the AMA Guides, noting that the designated doctor had stated that he was rescinding his own explanation for the 15% IR in favor of that of Dr. F. A response to the letter of clarification was not forthcoming, so the hearing officer sent a second letter to the designated doctor. The designated doctor responded to that letter stating that he had unsuccessfully attempted to contact Dr. F to discuss the IR. The designated doctor concluded "I will continue to contact [Dr. F] but since I relied upon a specialist to determine the . . . IR then he will have to clarify his calculations. I still feel that the IR should be 15% based on [Dr. F's] report." In response to this letter, the hearing officer sent a third letter to the designated doctor seeking clarification of the rating and stressing the importance of a timely response. The designated doctor did not respond to that letter. Thus, the hearing officer closed the record and determined that a second designated doctor should be appointed. We cannot agree that the hearing officer erred in so doing. There were legitimate questions raised as to how Dr. F calculated the claimant's IR, and the designated doctor, who stated that he had adopted Dr. F's explanation of the rating as his own, could not or would not answer those questions, stating that Dr. F would have to provide that clarification. Under these circumstances, the hearing officer did not err in determining that a second designated doctor is required to determine the claimant's IR.

Given our affirmance of the hearing officer's determination that she could not resolve the IR issue, we likewise affirm her determination that the issues related to the claimant's entitlement to first and second quarter SIBs are not ripe. The IR issue must be resolved before any issue related to SIBs can be considered and decided. Accordingly, we strike stipulations 1.G., 1.H., 1.I., 1.J., 1.K., and 1.L., which relate to the SIBs issues.

As modified to strike stipulations 1.G. through 1.L., the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica Lopez
Appeals Judge